

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA

Gordon Hempton,

Plaintiff,

v.

Pond5, Inc., a Delaware Corporation; and
Pond5 user ckennedy342, a corporation or
individual of type unknown

Defendants.

NO.

COMPLAINT FOR DAMAGES FOR
COPYRIGHT VIOLATIONS OF 17 U.S.C.
§101 *et seq.*

DEMAND FOR JURY TRIAL

Plaintiff Gordon Hempton hereby alleges the following causes of action against
Defendant Pond5, Inc. and the John Doe Pond5 user identified as ckennedy342:

I PARTIES

1. Plaintiff Gordon Hempton (“Plaintiff” or “Mr. Hempton”) is a resident of Kitsap County, Washington. Mr. Hempton is the world’s preeminent nature sound recordist and a pioneer in the field of acoustic ecology.

2. Founded in 2006, Defendant Pond5, Inc. is incorporated as a Delaware corporation licensed to conduct business in, and with a principal place of business, in New York. Defendant Pond5 sells media content through their website, enabling purchasers to use the content worldwide.

1 3. Defendant John Doe, Pond5 user ckennedy342, is a user on the Pond5 network.

2
3 **II JURISDICTION AND VENUE**

4 4. This action arises under the copyright laws of the United States of America, 17
5 U.S.C. § 101 *et seq.* Jurisdiction over the copyright claim is conferred upon this Court by 28
6 U.S.C. §§ 1331 and 1338.

7 5. Venue is proper in this Court pursuant to 28 USC §§ 1391(b) and (c).

8 6. Defendants purposefully availed themselves of this forum by distributing
9 copyrighted works of authorship registered by Plaintiff and by selling content in this forum.

10 7. Defendant Pond5 has transacted business in and has had continuous and
11 systematic contacts with this forum.

12 8. A substantial part of the events or omissions giving rise to the claims occurred in
13 this district and a substantial part of the property that is the subject of this action is situated in
14 Washington.

15 **III FACTUAL BACKGROUND**

16 9. Defendant Pond5 is an online purveyor of video footage, stock photos,
17 illustrations, music tracks, sound effects, project templates, and 3D models, among other
18 things. Defendant Pond5 sells media content through their website, enabling purchasers to use
19 the content worldwide. Pond5 sells media content through their website, enabling purchasers to
20 use the content worldwide.

21 10. Defendant John Doe is a Pond5 user who goes by the username ckennedy342.
22 Ckennedy342 has uploaded thousands of sound files to Pond5 for sale, many or all of which are
23 copyrighted works of others.

24 11. Gordon Hempton, Plaintiff, is the world's preeminent nature sound recordist and
25 world-renowned pioneer in the field of acoustic ecology.

26 12. Plaintiff has pursued nature sounds for the past 34 years, capturing Earth's rarest
27 sounds. Plaintiff has spent his lifetime, committing extensive resources, to create unique nature

1 recordings.

2 13. Mr. Hempton has travelled to the most remote areas of the globe to produce the
3 rarest, highest-quality and most complete recordings of a variety of rare acoustic environments
4 and has documented the effect of acoustic phenomena on these environments. It frequently
5 takes him more than one month to capture only mere fifteen minute segment of useable
6 material.

7 14. Plaintiff's art takes form based upon his ability to personally measure different
8 sound levels, interpret changing outdoor sound patterns, and select exact listening positions to
9 make his recordings.

10 15. The importance of Mr. Hempton's life work has been recognized world-wide by
11 scientists, ecologists, environmentalists, artists and the media. Plaintiff is celebrated
12 internationally for creating recordings of the vanishing natural soundscapes on the planet. USA
13 Today wrote that Plaintiff is "America's foremost guru of quiet" and the San Francisco
14 Examiner recognized that his nature recordings "immortalize the few remaining quiet corners
15 of the world." Plaintiff's sound recordings are "the last echo of nature at its most natural,"
16 according to the Philadelphia Inquirer.

17 16. In 2010, Mr. Hempton and his work was the subject of a feature length
18 documentary film, "Soundtracker."

19 17. Mr. Hempton is also the author of a 2009 non-fiction book "One Square Inch of
20 Silence" which chronicles his work on the natural and social history of the effect of acoustics in
21 various environments.

22 18. Mr. Hempton and his work have been featured in Time magazine (July 27,
23 1998), People (May 30, 1988), The New York Times (April 10, 2010), Smithsonian Magazine
24 (April 1995), The LA Times (November 15, 2015), Seattle Times (October 21, 1985), The
25 Seattle Weekly (August 6, 1986), Backpacker Magazine (October 2011), The Red Bulletin
26 (October 2011) and other print media.

27 19. Mr. Hempton has been interviewed and his recordings featured by numerous

1 broadcast media outlets, including NPR, NBC, and Oprah Winfrey.

2 **Plaintiff's recordings are artistically unique, and time and effort intensive**

3 20. Mr. Hempton's interest in the conservation and study of nature sounds began in
4 the early 1980's, while pursuing advanced graduate work in plant pathology at University of
5 Wisconsin at Madison.

6 21. One late summer day returning to university from summer vacation, Mr.
7 Hempton, to avoid the expense of a motel, lay down between rows of corn in a Midwestern
8 field.

9 22. As a thunderstorm rolled over the field drenching Mr. Hempton, he experienced
10 something of an epiphany, and realized he had never fully paid attention to the exquisite
11 symphony of the natural world.

12 23. Wanting to preserve and share such auditory experiences as this one, in 1983,
13 Mr. Hempton sought out the advice of Dr. Jim Gulledge, Director of the Macaulay Library at
14 Cornell University's Laboratory of Ornithology, which housed the largest library of natural
15 sounds then in existence.

16 24. Dr. Gulledge confirmed Mr. Hempton's concern that almost no work was
17 occurring to archive pristine natural soundscapes and that development, with its concurrent
18 noise pollution and species extinction, was reducing the number and variety of natural
19 soundscapes in existence.

20 25. With the field of acoustic ecology still embryonic, and with the commercial
21 value of such recordings not yet realized by the market, Mr. Hempton was not surprisingly
22 unable to find an employer who would employ him to do the work that he dreamed of doing.

23 26. In 1984 with \$12,000 he had painstakingly saved over three years working as a
24 bike messenger, Mr. Hempton took a leap of faith and purchased a state of the art Swiss tape
25 recorder and German microphone system engineered to replicate bilateral hearing of humans.

26 27. While embarking on his career of a recordist Hempton continued to work as a
27

1 bike messenger for six more years in order to finance his goal of recording the Earth's rarest
2 sounds.

3 28. Over the course of his career Hempton has continued to modify his system and
4 has devised a number of ground-breaking hardware modifications and techniques to capture
5 audio recordings.

6 29. His recordings remain at the utmost forefront of amplification and fidelity.

7 30. His resulting system is so sensitive that under the proper conditions he has been
8 able to record engine noise from a distance of 20 miles.

9 31. Armed with his custom set-up, over three decades Mr. Hempton has travelled to
10 every continent except Antarctica and to some of the most remote and foreboding places in the
11 world in order to record rare and often endangered soundscapes.

12 32. From these travels across the world, sometimes waiting at a particular location
13 for as much as six weeks for optimal conditions, Mr. Hempton has produced the world's largest
14 archive of rare and vanishing nature sounds. This is his life's work.

15 33. Mr. Hempton supplies his own creative signature to the sound recordings by
16 carefully selecting the time, place and location for recordings to capture the unique qualities of
17 his works of authorship. Simply, Mr. Hempton has spent his career building a sound library
18 that is peerless when it comes to rare and endangered soundscapes.

19 34. Each of Mr. Hempton's copyrighted works of authorship is different and reflects
20 the unique qualities of his works of authorship.

21 **Plaintiff's recordings have immense value, as reflected in their copyrights and**
22 **commercial success**

23 35. Plaintiff's recordings have artistic value and uniqueness.

24 36. Plaintiff's sound recordings are unique and difficult to obtain.

25 37. Plaintiff's sound recordings have substantial commercial value.

26 38. On March 14, 1985, Mr. Hempton effectively registered his first of many
27 copyrights entitled: Gordon W. Hempton: March 2, 1985 Natural Experiments in Binaural

1 Recordings. **Exhibit 1.**

2 39. Plaintiff's nature recordings are protected under U.S. copyright law.

3 40. In registering his works for copyright, Mr. Hempton had an extensive discussion
4 with the U.S. Copyright Office regarding the unique nature of his works, in which Mr.
5 Hempton demonstrated that his work is an artistic composition created with unique recording
6 techniques and skill.

7 41. Today, in addition to tens of thousands of recordings that Mr. Hempton has in
8 his nature sound library, Mr. Hempton has registered copyrights for 17 album length audio
9 recordings identified by the Copyright office as: "Ebb and Flow" SR 117-450 (December 4,
10 1989); "Cedar Creek" SR 117-509 (June 13, 1990); "Old Growth" SR 117-510 (June 13, 1990);
11 "Wilderness Journey, SR 117-511 (June 13, 1990; "Tennessee Nightwalk" SR 117-512
12 (December 4, 1989); "Okanogan Overture" SR 117-514 (December 4, 1989); "Dawn Chorus"
13 SR 122-807 (August 27, 1990); "Earth's Morning Song" SR 146-695 (December 6, 1991);
14 "Rolling Thunder" SR 146-704 (December 6, 1991); "Earth" 148-597 (November 9, 1992); SR
15 148-598 "Australia" (November 9, 1992); SR 148-599 "Asia" (November 9, 1992); SR 148-
16 600 "North America" (November 9, 1992); SR 148-601 "Africa" (November 9, 1992); SR 148-
17 602 "South America" (November 9, 1992); SR 369-481 "Collector's Set" (June 6, 2006); and,
18 SR 372-701 "Quiet Places Collection" (June 7, 2005). See Exhibits 2-18.

19 42. From 1986 to the present, Mr. Hempton has commercially marketed his
20 recordings and his work, has been licensed to, and used in, television shows, radio programs,
21 large budget feature films, video-games, software, cellular phone applications and other media.

22 43. In 1986, Mr. Hempton began to commercially market his work and sell signed
23 limited editions in a series called "Rare Native Acoustics" at American Heritage Fine Arts
24 Gallery in Seattle, Washington.

25 44. In 1989, Mr. Hempton's work received further recognition from the Charles A
26 Lindbergh Foundation, a philanthropic organization that seeks to promote balance between
27 technology and human and natural environments, and Mr. Hempton was awarded a grant equal

1 to the cost of Lindberg's plane, The Spirit of St. Louis.

2 45. Also in 1990, Mr. Hempton received an Associate Laureate for The Rolex
3 Awards for Enterprise.

4 46. In 1990, Mr. Hempton received a National Endowment of the Arts grant to
5 continue his work in acoustic ecology.

6 47. During this same year Mr. Hempton was featured in PBS's nationally televised
7 documentary "Vanishing Dawn Chorus." Hempton's sound recordings in this documentary
8 earned him an Emmy Award for Individual Achievement in 1992.

9 48. Finally, in 1992, with recognition and financial security from his recordings to
10 gain control of his projects Hempton transitioned to working full time on time to preserve
11 culturally important natural soundscapes that were threatened by noise pollution.

12 49. Mr. Hempton began work on two major projects that he finished in 1994. One
13 project was to seek and capture the nature sounds of Mark Twain's childhood based on his
14 writings and autobiography. The second was to record the nature sounds that John Muir
15 described during his exploits in Yosemite

16 50. From 1992 to 2014, Mr. Hempton worked at various times as an independent
17 contractor for Microsoft Corporation where he captured specific sounds that Microsoft used in
18 various innovative products.

19 51. In recent years it has become apparent that because of Mr. Hempton's unique
20 process of recording his sound library is especially suitable for virtual reality applications due
21 to the fact that directional information is critical for successful user experience.

22 52. Mr. Hempton has been successful in transitioning his business from the analog
23 to the digital world. In his book, One Square Inch of Silence, published in 2009 Mr. Hempton
24 notes on page 43:

25 *I live by my ears. I listen and record and consult. Businesses from around the*
26 *world seek my recordings and advice, which I offer freely, up to a point and then*
27 *charge accordingly. I also published more than 60 albums of my environmental*
soundscapes and thanks to iTunes I no longer need to keep a CD inventory of any

1 *consequence. Nowadays it's commerce by mouse-clicks uploads downloads*
2 *PayPal and wire transfer...*

3 53. In 2004, Hempton established the music label The Sound Tracker, a registered
4 trademark and continues to sell via iTunes his copyrighted works of authorship from more
5 than 50 albums.

6 54. In 2012, Mr. Hempton established Quiet Planet LLC and the domain
7 www.quietplanet.com, from which he licenses certain collections of nature sounds from his
8 library to independent producers.

9 55. Mr. Hempton has licensed his individual recordings to musicians, filmmakers,
10 videogame makers, web designers, universities, and has been the preeminent source for nature
11 recordings world-wide.

12 56. To this day, Mr. Hempton continues to invest heavily in collecting the vanishing
13 natural soundscapes and licensing his recordings to producers of media world-wide.

14 **Copyright infringement by Pond5**

15 57. Founded in 2006, Defendant Pond5 is incorporated in Delaware, and has a
16 principal place of business in New York.

17 58. Pond5 operates as an on-line vendor for royalty-free digital media, and directly
18 licenses third party content to entities worldwide.

19 59. According to its terms and conditions, Pond5 retains half of the proceeds of
20 every media sale transacted on its website.

21 60. Defendant Pond5 is financially dependent on the content of its website and the
22 media posted by contributors to its website.

23 61. Pond5's business model is such that it directly profits from the licensing of
24 content through its website.

25 62. On May 4, 2015, alerted by colleagues in the industry, Mr. Hempton became
26 aware that his copyrighted works of authorship were being offered for sale by Defendant Pond5
27 Inc. on their website www.pond5.com.

1 63. While Mr. Hempton was unable to search Pond5's website by actual author, he
2 was able to find 138 of his copyrighted sound recordings on the website.

3 64. On information and belief, the total number of infringed works far exceeds 138.

4 65. On May 26 and 29, 2015, Mr. Hempton's attorney contacted Pond5 via email
5 regarding the nature and extent of the piracy and copyright infringement.

6 66. On June 9, 2015, Mr. Hempton revisited the Pond5 site. To his amazement, the
7 number of sound files attributed to ckennedy342 had increased by more than 1000 files over
8 the past 30 days. Mr. Hempton found a total of 10,242 sound files for sale on the Pond5 site by
9 ckennedy342.

10 67. All known pirated works were uploaded and submitted to Pond5 using the
11 username ckennedy342. However, because of the difficulty in search Pond5's website, it is
12 possible other pirated material is present at Pond5's website.

13 68. Ckennedy342 began uploading and selling Plaintiff's works on Pond5, without
14 Plaintiff's permission, as early as September 2014.

15 69. Pond5 states prominently on the "About Us" page of its website that "Every clip
16 submitted is reviewed by our team of expert curators for approval." See
17 http://www.pond5.com/index.php?page=about_us (last accessed on September 1, 2015).

18 70. Defendant knowingly reviewed, accepted, and approved submissions by user
19 ckennedy342, who represented Plaintiff's nature recordings as his/her/its own.

20 71. Because of the difficulty in obtaining data on a search one-by-one basis, a
21 complete record of uploads is not known.

22 72. It is known, for example, that "Thunder Moderately Distant" was uploaded on
23 September 10, 2014. "Coyote Solo," "Desert Bird Wing Flutters," "Desert Morning Bird
24 Chorus (3)" were uploaded on September 22, 2014. "Prairie Quiet," "Faint Insects Birds,"
25 "Red-Tailed Hawk," and "Windy Grass Wispy Breeze" were uploaded on November 30, 2014.
26 "Prairie Wind Buffeting Faint Crickets" was uploaded on December 4, 2014.

27 73. Pond5 reviewed and approved the posting of thousands of ckennedy342's

1 submissions, including a substantial but unknown number of Plaintiff's works, even though this
2 large number of submissions placed Pond5 on notice that ckennedy342 was uploading huge
3 amounts of content on the Pond5 system which could not have been achieved by an original
4 author.

5 74. Pond5 failed to prevent or respond to the highly suspicious massive uploading
6 by ckennedy342.

7 75. By accepting the submissions and subsequently posting the infringing material
8 on the Pond5 website for sale, Defendant began exploiting and benefitted from Plaintiff's
9 copyrights.

10 76. To date, it is known that Defendant approved and enabled at least 138 of
11 Plaintiff's sound recordings to be posted, sold, and dispersed worldwide through its website.

12 77. Defendant Pond5 recognizes the Copyright Act on its website, and pledges to
13 ensure that its website contributors are the true copyright owners of the content Defendant
14 agrees to sell and distribute.

15 78. Defendant requires its employees scrutinize and select media to post and sell on
16 its website. Defendant advertises that it is "quite picky" when it reviews media content
17 submitted for sale on its website.

18 79. Defendant Pond5 maintains control over the content on its website.

19 80. Defendant Pond5 reserves the right to remove for any or no reason at all the
20 media content on its website.

21 81. Defendant financially benefitted from hosting and selling Plaintiff's sound
22 recordings on its website.

23 82. Defendant's business was enhanced by the presence of Plaintiff's works, which
24 were posted on its website for an extensive period of time.

25 83. Plaintiff's copyrighted works sold by Pond5 are no longer in the control of
26 Pond5.

27 84. The full extent that Plaintiff's work has been unlawfully sold and distributed by

1 Defendant is impossible to assess without discovery.

2 85. Plaintiff has been financially harmed, and the integrity and value of his
3 copyrighted sound recordings have lessened as a result of Defendant Pond5's serial
4 infringement of his copyrighted works of authorship.

5 86. On June 24, 2015, Mr. Hempton's attorney sent Pond5 via certified mail a
6 Digital Millennium Copyrights Act (DMCA) notice of infringement and requested that the
7 pirated material owned by Mr. Hempton be removed from the site.

8 87. On June 30, 2015, Pond5, after at least 11 months of profiting from the
9 unauthorized sale and distribution of Plaintiff's works, Pond5 claimed that it had removed all
10 submissions by ckennedy342 and terminated his user account.

11 88. On July 2, 2015, Mr. Hempton's attorney sent Pond5 via certified mail a
12 spoliation letter requesting that all copies of the pirated recordings, records of sale, and other
13 relevant documents as they relate to user ckennedy342 be preserved.

14 89. This suit follows.

15 **IV CLAIMS - COPYRIGHT INFRINGEMENT**

16 **Direct Infringement of Copyrights by Pond5**

17 90. Plaintiff realleges the preceding paragraphs of this complaint.

18 91. Plaintiff's nature recordings, available on Defendant Pond5's website for sale
19 without Plaintiff's knowledge or permission, are subject to valid, registered copyrights by the
20 U.S. Copyright Office.

21 92. At all relevant times, Plaintiff has been the sole producer and owner of the audio
22 works reproduced, distributed, and sold by Pond5 on its website.

23 93. Plaintiff's copyrighted works were copied to and publicly displayed from
24 servers and/or other hardware owned, operated, and/or controlled by Pond5.

25 94. The unauthorized copying, distribution, and sale of recordings via the Internet
26 constitutes copyright infringement in violation of 17 U.S.C. § 106 of the Copyright Act. By
27

1 reproducing and distributing Plaintiff's sound recordings without seeking his permission,
2 Defendant's actions constitute copyright infringement in violation of 17 U.S.C. § 101 et seq.

3 95. Defendant unlawfully violated Plaintiff's exclusive rights to his copyrighted
4 nature recordings by posting them for reproduction, distribution and sale, without Plaintiff's
5 consent, on Defendant Pond5's website, <http://www.pond5.com/>.

6 96. Defendant directly infringed the copyrights in Plaintiff's works when Pond5
7 employees reviewed the infringing submissions, approved the submissions, and subsequently
8 transferred the infringing files onto Pond5's website.

9 97. Defendant received 50 percent of the profit from every unauthorized sale of
10 Plaintiff's copyrighted works, dating back to at least September 2014.

11 98. Defendant did not have permission to exploit Plaintiff's works on
12 <http://www.pond5.com/> and knew or should have known its acts constituted copyright
13 infringement.

14 99. User ckennedy342 uploaded *thousands* of works to Pond5's website. On
15 information or belief, Defendant made no attempt to discover the proper owner of the works
16 before exploiting them for direct profit, nor did it take measures to determine whether the
17 works had been properly licensed.

18 100. On information and belief, user ckennedy342 appeared to have used an
19 automated system in order to bulk upload files.

20 101. Defendant's conduct was willful within the meaning of the Copyright Act. At a
21 minimum, Defendant acted with willful blindness to and in reckless disregard of Plaintiff's
22 registered copyrights.

23 102. As a result of its wrongful conduct, Pond5 is liable to Plaintiff for copyright
24 infringement pursuant to 17 U.S.C. § 501. Plaintiff has suffered, and will continue to suffer
25 substantial losses, including but not limited to financial loss from the authorized sale of his
26 works, and damage to his brand and business reputation through the loss of control over his
27 copyrighted works.

Direct Infringement by User ckennedy342

103. Plaintiff realleges the preceding paragraphs of this complaint.

104. Defendant's members and/or other users also engaged in direct copyright infringement of Plaintiff's copyrighted nature recordings.

105. Specifically, it is known that Pond5 user ckennedy342 uploaded *more than 100* of Plaintiff's works to Pond5's website for distribution, reproduction and sale without Plaintiff's authorization, dating back to at least September 2014, in violation of 17 U.S.C. § 501.

Contributory Infringement by Pond5

106. Plaintiff realleges the preceding paragraphs of this complaint.

107. Pond5's members and customers, including user ckennedy342, engaged in direct copyright infringement of Plaintiff's copyrighted works.

108. Defendant induced, and materially contributed to the infringing acts of its customers by reviewing and approving each submission and allowing its users and/or members to reproduce and publicly sell Plaintiff's works without regard for Plaintiff's ownership of these works.

109. Defendant had knowledge of these infringing acts and financially benefitted from these acts.

110. The acts and conduct of Pond5, as alleged in this Complaint, constitute contributory copyright infringement.

Vicarious Infringement by Pond5

111. Plaintiff realleges the preceding paragraphs of this complaint.

112. Pond5's members and customers, including user ckennedy342, engaged in direct copyright infringement of Plaintiff's copyrighted works.

113. Defendant had the right and ability to control the infringing acts of its members and potential customers.

114. Defendant directly benefited financially from the infringement of Plaintiff's

1 work by collecting 50 percent of the profits derived from each sale of one of Plaintiff's nature
2 recordings, dating back to at least September 2014.

3 115. Defendant indirectly benefited financially from the infringement of Plaintiff's
4 work because the nature recordings enhanced Defendant's user base and website.

5 116. Each unauthorized distribution, public reproduction and sale of plaintiff's work
6 constitutes a separate and distinct act of infringement.

7 117. The foregoing acts of infringement by Pond5 have been willful, intentional, and
8 purposeful, and in disregard of Plaintiff's rights to his work.

9 118. Pond5's conduct, as alleged herein, constitutes vicarious infringement of
10 Plaintiff's copyrights in violation of 17 U.S.C. §§ 106 and 501.

11 **Damages**

12 119. Defendant's use of Plaintiff's work does not fall under the "safe harbor" in 17
13 U.S.C. § 512. Defendant had, and continues to have, the right and ability to control the
14 infringing activity, and received financial benefit from each infringing sale of Plaintiff's
15 copyrighted works.

16 120. As a result of Defendant's infringing acts, Plaintiff has been injured and has
17 suffered damages in an amount to be proved at trial.

18 121. Plaintiff is entitled to either: (1) actual damages and profits suffered by him as a
19 result of the infringement, as well as any profits Defendant obtained not taken into account in
20 computing the actual damages, under 17 U.S.C. § 504(b); or (2) statutory damages pre-
21 judgment under 17 U.S.C. § 504(c).

22 122. Defendant's company policy mandates that employees select, control, and when
23 necessary, remove, content from its website. Defendant, despite its policy of policing of its
24 website, nonetheless actively infringed Plaintiff's works, many times over.

25 123. Defendant Pond5's cavalier failure to properly shoulder the burdens of the
26 copyright regime, and its subsequent serial infringement of at least 138 of Plaintiff's works,
27 also constitutes a willful violation of the Copyright Act, entitling Plaintiff to recover even

1 greater statutory damages under 17 U.S.C. § 504(c)(2).

2 124. In addition to actual and/or statutory damages pursuant to 17 U.S.C. § 504,
3 Plaintiff claims such other remedies to which it may be entitled by law, including Defendant's
4 revenues and profits pursuant to 17 U.S.C. 504 (b); injunctive relief pursuant to 17 U.S.C. §
5 502; impounding and destruction of infringing articles pursuant to 17 U.S.C. § 503; and
6 attorney's fees and costs pursuant to 17 U.S.C. § 505 and otherwise allowed by law.

7 **V REQUEST FOR JUDGMENT**

8 125. Plaintiff requests that the court enter judgment against Defendant Pond5 as
9 follows:

10 (a) An order preliminarily and permanently enjoining Defendant and all
11 persons in active concert of participation with any of them from using Plaintiff's
12 copyrighted work;

13 (b) An order, as specifically provided by 17 U.S.C. § 503 and other
14 applicable law, for seizure to recover, impound, and destroy all things infringing
15 Plaintiff's copyrighted materials, including any video, written, or digitally
16 maintained materials Defendant may possess or have under their control, or
17 under the control of any of Defendants' respective officers, agents, servants,
18 employees, attorneys, or any other person acting in concert or participation with
19 Defendant;

20 (c) An order requiring Defendant to file with this Court and serve upon
21 Plaintiff, within 30 days of service of this order, a report in writing under oath
22 setting for the in detail the matter and form in which Defendants have complied
23 with the terms of the ordered relief;

24 (d) An order requiring Defendant to attempt to identify all purchasers of Mr.
25 Hempton's audio recordings and to recall such recordings;

- 1 (e) Actual or statutory damages in an amount sufficient to compensate
2 Plaintiff for all injury sustained as a result of Defendant's wrongful activities,
3 including wrongful profits of Defendants, as provided under applicable law;
4 (f) Reasonable attorney fees and litigation expenses pursuant to 17 U.S.C. §
5 505;
6 (g) A supplemental award to cover any adverse tax consequences of the
7 judgment; and
8 (h) Awarding Plaintiff such further equitable, legal or additional relief as
9 may be appropriate and just.

10 DATED: September 25, 2015.

11 BRESKIN JOHNSON & TOWNSEND, PLLC

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